

EXHIBIT B

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA,

5 v.

15 Cr. 706 (VSB)

6 NG LAP SENG,
7 a/k/a "David Ng" and
8 JEFF C. YIN,
9 a/k/a "Yin Chuan,"

10 Defendants.

Oral Argument

11 -----x
12 New York, N.Y.
13 September 12, 2016
14 12:15 p.m.

15 Before:

16 HON. VERNON S. BRODERICK,

17 District Judge

18 APPEARANCES

19 PREET BHARARA

20 United States Attorney for the
21 Southern District of New York

22 DANIEL C. RICHENTHAL

23 JANIS M. ECHENBERG

24 DAVID S. JONES

25 Assistant United States Attorneys

HUGH H. MO

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-and-

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Attorney for Defendant Yin

BY: SABRINA P. SHROFF

ALLEGRA GLASHAUSSER

G9cWsenC

1 THE COURT: Could the parties please note their
2 appearances.

3 MS. ECHENBERG: Good morning, your Honor. Janis
4 Echenberg, for the government, and with me at counsel table
5 from the criminal division of the U.S. Attorney's Office is
6 Daniel Richenthal and also from the FBI Special Agent Ryan
7 Carey. And I believe Mr. Jones can introduce himself.

8 MR. JONES: Yes, your Honor. I'm David Jones from the
9 civil division of the U.S. Attorney's Office, and I've been
10 requested to appear here today by the State Department. In the
11 event any questions concerning the U.N.'s privileges and
12 immunities arise, I'll be prepared to address those from the
13 perspective of the State Department, if that's helpful.

14 THE COURT: All right. Thank you.

15 MR. MO: Good afternoon, your Honor. Hugh H. Mo for
16 Mr. Ng Lap Seng, and his appearance, by the way, has been
17 waived, with your Honor's approval. And with me is Alexandra
18 Shapiro, my cocounsel, as well as Tai Park as well as
19 Christopher Greer.

20 MS. SHROFF: Good afternoon, your Honor. Sabrina
21 Shroff and Allegra Glashausser for Mr. Yin, whose appearance
22 today is waived. He is still in California. He is going to be
23 informed of the proceedings both with the conversation with the
24 two of us and we will provide to him a copy of the transcript
25 of today's proceeding.

G9cWsenC

1 THE COURT: OK. Is he aware of it?

2 MS. SHROFF: He is, your Honor, but we haven't gone
3 over all the various issues that will be discussed.

4 THE COURT: The only thing, obviously, if he requests
5 a copy of the transcript, there will be some substantive issues
6 that we discuss, as I mentioned in my order, but his
7 appearance, as Mr. Ng's appearance, will be waived for purposes
8 of this court proceeding. I will say that most of the
9 discussions, I think, that we'll be having relate to legal
10 issues and oftentimes clients decline to be present, but having
11 said that, obviously I'd be more than happy for them to be here
12 and it's their right to be here.

13 First I want to talk about motion schedule, and I'll
14 just run through where things currently stand. Right now the
15 date for pretrial motions, with the exception of the motions
16 that had already been filed, would be today. Ms. Shroff and
17 Ms. Glashausser had asked for an extension of time for two
18 weeks to September 26. And Mr. Park on behalf of Mr. Ng
19 indicated that if it was going to change the trial date, Mr. Ng
20 would also like to avail himself of additional time. The
21 government expressed concern that there was going to be a
22 backup of motions and that that might impact the government's
23 ability to respond and also perhaps the trial date of January
24 23.

25 In response, Mr. Park wrote, in an Emily Litella

G9cWsenC

1 moment, and basically said "never mind," as I understand it; in
2 other words, that you would file your briefs today and adhere
3 to the schedule because you didn't want, again, anything to
4 happen with the trial date of January 23.

5 This is what I'm going to propose, and then I'll hear
6 from the parties. I took a look at the transcript from July
7 11, where we talked about motion schedules, and I noted that we
8 for no particular reason set 30 days for a reply. What I would
9 propose is this:

10 Ms. Shroff, Ms. Glashausser, you can have until
11 September 26 to file your opening brief. The government will
12 be given an additional two weeks, and I recognize that
13 literally falls after Thanksgiving weekend, so I'd be willing
14 to give you until November 30 to get your papers in, and then
15 the date for the replies would remain consistent. In other
16 words, if Mr. Park and counsel for Mr. Ng decide to file their
17 papers today, fine. Actually, I would suggest that maybe
18 sooner rather than later would be better because obviously I
19 suspect there are going to be a lot of motions that I'm going
20 to have to deal with, as well as I'm sure there are going to be
21 *in limine* motions. So I would say December 16 for the reply,
22 because if I'm giving the government an additional two days,
23 I'll add two days on.

24 But if at all possible, I guess, Ms. Shapiro, Mr. Mo,
25 Mr. Park, if you can get it in earlier, I would ask that you do

G9cWsenC

1 that. Obviously it gives you more time on the back side if you
2 think you're going to have a lot to say on reply. That's what
3 I propose doing. It doesn't really alter the schedule and it
4 keeps us, I think, on track for trying the case on January 23.

5 First, Ms. Shroff, since it was the application of Mr.
6 Yin, I'll hear from you first.

7 MS. SHROFF: Your Honor, my bigger problem is the
8 trial date. When I was here setting the trial the last time, I
9 think I was clear.

10 THE COURT: Early January trial before Judge Wood.

11 MS. SHROFF: Yes, but I had also this problem trial
12 before Judge Ramos, and that trial was supposed to start in
13 ample time to be completed and for me to have enough time to
14 work on Jeff Yin's trial. In the Judge Ramos case, which is
15 United States v. Gammal, the U.S. Attorney's Office in their
16 wisdom decided to go get a FISA warrant at the last moment and
17 then give us FISA notice. If they gave us FISA notice, we have
18 to do FISA briefing, so that pushed that trial date into early
19 December. Now I have a December 5 trial date before Judge
20 Ramos, and I was supposed to have completed that trial well
21 before December 5. The December 5 trial is a terrorism trial.
22 We anticipate it's going to take us a week just to pick the
23 jury, and then it's a two-week trial. There's no way for me to
24 have a January 23 trial before this Court on Jeff Yin. I have
25 an "in" defendant in Gammal and an "out" defendant in Yin. So

G9cWsenC

1 even if I were to give away my Judge Wood's trial, which seems
2 will now be a nonissue because the prosecutor in the Gammal
3 case is also the prosecutor in the Wood case, so he can't be in
4 two places at one time, and neither can I, so we've decided to
5 move the Wood case to later on, but even if I were to ask
6 someone to take over the wood case, I still would not be able
7 to do a terrorism trial and this trial back to back with no
8 break in the middle.

9 THE COURT: All right. This is what I propose to do.
10 Let's go through some of the other issues, Ms. Shroff. Did
11 Judge Ramos know about this trial also when they rescheduled
12 that case?

13 MS. SHROFF: No, because in all candor, no, I didn't
14 really have any thought that an "in" defendant, who's been in
15 custody longer than Jeff Yin, that case is almost a year older.
16 And the request was ours, so it's not Judge Ramos's fault; it's
17 completely mine.

18 THE COURT: OK. No.

19 MS. SHROFF: Your Honor, I understand what you're
20 saying, but, yes, I didn't tell him.

21 THE COURT: That's fine. Have you spoken with
22 Mr. Ng's counsel and the government concerning this issue?

23 MS. SHROFF: Sure. Mr. Ng's counsel wants a January
24 23 trial date. I'm assuming that the government wants the
25 January 23 trial date. I think the best solution would be to

G9cWsenC

1 just sever the two defendants, let the government and Mr. Ng be
2 happy and go with the January 23 trial date and let us go
3 later, but I'm assuming nobody's going to go for that.

4 THE COURT: The main thing is efficiency. What you'd
5 be asking, in essence, is for us to impanel two juries for the
6 same case for two defendants who are not incarcerated for whom
7 there isn't any speedy trial issue. Putting aside I have no
8 problem trying cases and presiding over cases, but it seems to
9 me to be inefficient. We'll come back to this issue of the
10 trial date a little bit later because I will have to give it
11 some thought, quite frankly. I'll have to give it some thought
12 about how best to handle that, and I'll obviously hear from
13 Mr. Ng's counsel about this issue and from the government about
14 the issue a little bit later. But let's talk about some things
15 that I think are a little bit more substantive.

16 First I want to deal with the issues in my order,
17 specifically, the first issue. I'd like to ask the government
18 whether in connection with the documents that have been
19 produced by the United Nations, has the government produced all
20 the documents that it has received from the United Nations to
21 the defense?

22 MR. RICHENTHAL: Yes, your Honor, typically within
23 days of receipt.

24 THE COURT: OK.

25 Mr. Park, I want to talk a little bit about the reply.

G9cWsenC

1 I know you made a request to file a reply on the 19th, and as a
2 scheduling matter I don't really think I have an issue with
3 that. Quite frankly, at least at this juncture, I don't feel I
4 need a reply. I've read through all of the papers that have
5 been submitted. I admit I haven't given it a second pass
6 through, but I'm not sure I need a reply, so I want to talk at
7 least a little bit about the different categories of documents
8 that as I understand it are part of the request, the first I
9 guess being the PGA documents, which as I understand it would
10 be documents that would be coming in entirety in light of the
11 government's representation that they've produced documents
12 that they've received from the U.N., they've produced to the
13 defense, these would be documents that would be in the U.N.'s
14 possession that would be coming from them that, as I understand
15 it, I have no power or authority to direct the United Nations
16 to do anything. But based upon the letter that was attached to
17 the government's submission, as I understand it, and your
18 letter also, Mr. Park, the U.N. has indicated that they'll work
19 with the defense as they've worked with the government, and
20 then I assume produce or not produce or produce whatever they
21 feel is an appropriate amount of documents.

22 I guess what I'll say is this. With regard to the
23 argument about the United Nations and an indication in press or
24 media that they're cooperating with the government and somehow
25 creating more of a connection with the government, I reject

G9cWsenC

1 that notion. As you point out, public companies and even
2 private companies make statements that they're cooperating with
3 the government, but that doesn't convert those entities to be
4 sort of government agents, nor does it mean that those entities
5 merely turn over documents without, and I think my former
6 clients would be very surprised and your current and former
7 clients would be very surprised if you came in and said, We
8 have to turn over, they've asked for this stuff, without any
9 filter, in other words, saying, No, we're not going to do that.
10 And in this case, in any event, it's a statement in the media
11 from an entity that has immunity, and so they'll cooperate as
12 they see fit, as I understand it.

13 I guess what I'm saying is I don't think there's any
14 direction that I would give the government in connection with
15 this, so I think with regard to those documents, at least a
16 reply with regard to those, I don't see that there's much of an
17 issue. And quite frankly, I'll suggest that it would probably
18 be more beneficial just to proceed with the communications,
19 whatever they may be, that you may be having with the United
20 Nations to get whatever documents that you can from them
21 relating to the PGA documents. But I'll hear from you with
22 regard to those documents or at least that category of
23 documents.

24 MR. PARK: Thank you, your Honor. Frankly, the only
25 reason I asked for an opportunity to file a reply was because I

G9cWsenC

1 was concerned that your Honor would have exactly this reaction
2 and rule before I had a chance to be heard.

3 THE COURT: Sure.

4 MR. PARK: And I was on trial last week and preparing
5 for trial before, otherwise I would have filed a reply by
6 today, frankly.

7 THE COURT: Just to be clear, I'm not going to say
8 that you can't file it. What I'm saying is that, at least my
9 reading of the law, and also, quite frankly, my power to do
10 anything, I don't have any, with the exception of the
11 government, but I'm not sure what I would do or say to them.

12 MR. PARK: Here's what I would ask you to say to the
13 government, to cut to it, just direct the government to do
14 everything in its power to get the documents that the defense
15 is seeking so that the trial is not delayed and that Mr. Ng's
16 due process rights are not jeopardized. That's all. And they
17 may say, OK, we'll do the best we can, but they will at least
18 be under a court order.

19 Let me explain to you, Judge, some of the chronology
20 that I think is important for you to understand as you think
21 about the serious problem that we are having as defense counsel
22 in preparing for the defense of Mr. Ng. We submitted to the
23 government a request for these U.N. documents because we have
24 been receiving from the government periodically, and it's not
25 clear where the rhyme or reason is, but the documents are

G9cWsenC

1 clearly from the United Nations. The U.N. has submitted to the
2 government with a Bates number and a designation below that
3 says "voluntarily produced without prejudice to our immunity."
4 Now, they've been doing that, and they have had that
5 relationship with the government in terms of getting requests
6 from the government, producing to the government with this
7 designation, presumably for months, and it may well precede the
8 investigation. We don't know.

9 Now, here we are. We're trying to get documents that
10 we think the government should have collected, reviewed, even
11 before the prosecution was begun so that they can assess
12 whether they've actually had a criminal defendant on their
13 hands versus somebody as to whom there may simply be probable
14 cause as to whether a crime was committed.

15 Now, we don't profess to tell the government how to do
16 its job, but what we do know is this. They have been working
17 with the United Nations for a period of time to collect
18 documents on a regular basis, documents presumably that the
19 government believes are essential to their case and in response
20 to requests that they have fashioned for their case. Fair
21 enough. Now they are on notice, if they weren't before. They
22 are on notice as to what the defendants' views are as to what
23 is material to the defense. All we're asking is that they use
24 their same office and the channels they've already established
25 with the United Nations to obtain those documents. Given the

G9cWsenC

1 shortness of time between now and setting the trial date,
2 Judge, we think it is eminently fair. It is typically the U.S.
3 Attorney's position that they represent justice and not just
4 winning the case. All we're saying is please give us the
5 documents that we have articulated are necessary to prepare for
6 the defense of Mr. Ng, if they're not outright Brady, and we've
7 set out some of the reasons why we think some of them aren't
8 truly Brady materials.

9 That's the first part. The second part is this. When
10 we first made our request to the government, we had a telephone
11 call with them, and they said, Talk to Dan Gitner, he's
12 representing the United Nations. I happily called up Dan
13 Gitner and had a discussion with him. It turned out that a
14 request that we had written, Mr. Mo had written a carefully
15 drafted document request to the United Nations that sought some
16 of the same categories of documents. It was directed to
17 essentially the general counsel of the United Nations. Weeks
18 later we're told by Mr. Gitner it never got to him. The mail
19 doesn't apparently work. So it never got to him. If you're
20 going to make a request, you've got to go through the U.S.
21 Mission, so we did that.

22 We sent the same exact letter to the United Nations
23 Mission, to the U.N., got no response. I followed up just last
24 week asking, Did you ever get our request, and if so, where is
25 it? And finally he emailed a response to me saying yes, we got

G9cWsenC

1 it.

2 In the meantime, as your Honor will probably have seen
3 in their opposition to our motion to compel, the government
4 attached a letter from the United Nations to the U.S.
5 government through the U.S. Mission, Ambassador Samantha
6 Powers, her office, saying, We got this request finally and
7 here's all the things that have to get done, we have immunity,
8 we have this, we have that, an elaborate international
9 communique, if you will. Now, that was sent to the government,
10 not to us, not to the party that actually asked for it, but to
11 the government, talking about our request. That was sent to
12 the government on August 18. That's a letter dated August 18.
13 We don't find out about it, your Honor doesn't find out about
14 it, until 12 days later when the government appends it to their
15 opposition to the motion to compel, on August 31.

16 Here's the point, Judge. It is, to put it lightly, a
17 byzantine system of channels. We do not have the wherewithal.

18 THE COURT: Mr. Park, I'll cut to the chase.

19 Look, I'm not going to issue an order, but what I'm
20 going to say, Mr. Richenthal, to the extent you have contacts
21 and you can facilitate communications with whoever the people
22 are that need to be communicated with to get the documents, I'd
23 ask that you do that. Let me make one thing very clear. While
24 I have no doubt that the requests were carefully crafted, there
25 are probably a lot of those things, there may be some things,

G9cWsenC

1 and I think you've already started this process of, as you say,
2 prioritizing, but in circumscribing the request. I think that
3 in the end of the day, I don't know where the U.N. is going to
4 come out and what they're going to produce, but you may be in a
5 better position than you were if you were to come to me and try
6 to get a 17(c) subpoena to get the documents. What I'm going
7 to do, and again if there is an issue or problem, I'm going to
8 ask the government to basically, when you call and if you're
9 having problems, to try and put you in touch to expedite this
10 as fast as we can.

11 I understand that there's a process. You referred to
12 it as byzantine. I think there is just a protocol concerning
13 the way these things happen, that I think I would hazard a
14 guess that prior to these prosecutors being involved, they
15 probably, What do you mean, just call them up and you get the
16 documents. For whatever reason, that's not apparently the way
17 it works. I'm going to do that in connection with this, and
18 let me hear from Mr. Richenthal.

19 MR. PARK: Thank you, your Honor.

20 THE COURT: Do you have an objection to that,
21 Mr. Richenthal?

22 MR. RICHENTHAL: Absolutely not. We've already done
23 it and we've continued to do it, and indeed the defense already
24 has the information. In fact, well before we came into your
25 Honor's courtroom this afternoon, Mr. Park emailed the

G9cWsenC

1 pertinent person at the United States Mission to the U.N. That
2 email address is not public. Mr. Park, for his own purposes,
3 was able to determine who to contact, and he did it promptly,
4 as is his right. So if there is some confusion, we're happy to
5 remind him of the information he already has.

6 THE COURT: It's not a back-and-forth thing. My
7 object, and again by me commenting on these documents I'm not
8 in any way indicating that, A, they necessarily will be
9 relevant; B, they necessarily will be admissible at all. I
10 think that's for another time. With regard to the scope of the
11 request, it's up to the U.N. and its counsel to determine
12 whether or not they, how they view the scope. The issue is
13 there's no recourse. They have committed to, as I understand
14 it, and I think the actual wording is "willing to cooperate to
15 facilitate the proper administration of justice in this case,"
16 and that they've agreed to consider the request. I take them
17 at their word, whatever that means. To the extent they feel
18 it's appropriate, they'll respond.

19 Mr. Jones, I don't know if you have anything to add.
20 Am I correct at least on the law?

21 MR. JONES: Yes, and I did want to convey -- and thank
22 you, your Honor, for the opportunity to be heard -- that the
23 State Department and the U.N. are interacting in the ordinary
24 and appropriate course. I can confirm that I've been informed
25 by the State Department that it has conveyed the defendants'

G9cWsenC

1 document requests through the proper channels, which is the
2 U.S.U.N., the U.S. Mission to the United Nations, to the U.N.
3 That occurred on August 29. In case it helps and because I may
4 never be back here again, let me say one thing.

5 THE COURT: Don't be so sure about that.

6 MR. JONES: One can always hope. I'll try to keep
7 hope alive just by making clear, first off, I was asked by the
8 State Department at the U.N.'s request to make clear the U.N.'s
9 immune status, and I don't think there's any confusion about
10 that, and also to underscore that the U.N. has committed
11 voluntarily and stated voluntarily, just as your Honor said,
12 using the exact same words, its willingness to cooperate and
13 facilitate the proper administration of justice.

14 There is just one other thing I want to note about
15 exactly how the immunities work and particularly the limits on
16 the executive branch's authority. The government's opposition
17 to the motion to compel noted Section 2 of Article II of the
18 convention on the privileges and immunities of the United
19 Nations, which conveys immunity from legal process on the U.N.
20 That same convention, in Section 4, specifically provides that
21 the archives of the U.N. are, it's called inviolable. It's the
22 term of art, and I'm told by the State Department that means
23 that the executive branch or any other component of government
24 is equally powerless to compel the U.N. to act or produce
25 documents. I want to make that very explicit, that that's the

G9cWsenC

1 terms of the convention, and it is the State Department's
2 understanding that the executive branch simply lacks the power
3 to compel the U.N. to act, so it is indeed the case that
4 following this voluntary protocol and enlisting the assistance
5 and cooperation of the U.N. is the way to go and the only way
6 to go.

7 The other thing I would note, and I'm a stranger to
8 the case and the issues presented, but the U.N. has advised
9 that it's very concerned about the extraordinary breadth or
10 what it perceives as the extraordinary breadth of the
11 defendants' requests, both just simply from a searchability and
12 administrability perspective and then also just on the
13 substantive legal perspective. I'm not here to comment on
14 that, but I did want that to be conveyed to the Court and all
15 parties so that everyone's clear the U.N. undertakes to work
16 cooperatively, but at the same time it's going to have a
17 difficult time handling the current requests.

18 THE COURT: Sure. And I think, Mr. Park, I took it
19 from your letter that the process at least of, whether it's
20 winnowing down or narrowing, whatever it may be, has begun.

21 MR. PARK: It has, your Honor, and as your Honor knows
22 and everyone who's experienced in this area knows, you send out
23 a broad request and then you have a discussion with counsel for
24 the respective parties to get the priority you need. It just
25 took so much time to figure out who the parties are, and we've

G9cWsenC

1 subsequently sent a winnowing-down letter to the U.S. Mission
2 for that process, and I remain hopeful that with Mr. Richenthal
3 and Ms. Echenberg's cooperation that we'll start getting
4 things, and I appreciate the Court's input.

5 THE COURT: Sure. What I will say is this, obviously
6 what we don't have control over is the timing, and there are a
7 series of communications that have to happen before, I think,
8 even the requests make their way to a decision maker, and I'm
9 not saying there's one person, but whoever is going to make the
10 decision about production of documents or even engage in a back
11 and forth. I guess as quickly as you can establish, and I
12 don't know if it will be even quick, the ability to do that
13 back and forth as you would normally do in the case, the better
14 off we would be in terms of obviously where we currently stand
15 in the trial date. But I'd ask that you keep me informed with
16 regard to that progress, and this will come up in a bit when we
17 start talking about the trial date also.

18 As I understand it, the next tranche of documents are
19 the conference center documents, which as I understand, based
20 on the government's representation they've produced the
21 documents they've received from the United Nations and relating
22 to this tranche of information. Were there other entities in
23 those requests?

24 Let me ask this of the government. With regard to the
25 conference center requests, I understand you've turned over all

G9cWsenC

1 the United Nations documents relating to that. Were there
2 other entities from whom the government would have gotten
3 documents that are part of those requests? In other words, is
4 there some other entity? I assume it's just the United
5 Nations. That's all I want to confirm.

6 MR. RICHENTHAL: I'm not sure what other entities
7 there would be, so I guess I don't know how to answer your
8 Honor's question. We've certainly turned over every single
9 thing the United Nations or any component thereof has given us
10 typically within days. And let me just say apropos of that,
11 Mr. Park made a representation that we're working with the
12 U.N., there's no rhyme or reason, that's not accurate. We
13 don't work with the U.N. We make requests to the U.N. and then
14 the U.N. complies or doesn't comply, and that can take a
15 significant period of time. When they give us documents,
16 within days we turn them over. There's no working relationship
17 with the U.N. That's not a knock on the U.N., simply an
18 inaccurate statement on Mr. Park's behalf. But I'm not aware
19 of any other entity. When we get documents we turn them over.
20 We don't slice and dice them.

21 THE COURT: OK. Referring to the conference center
22 documents, "all the documents regarding communications," and
23 this is the second request in Mr. Park's submission on page 11,
24 and it's item 6, "all documents regarding communications
25 between the United States government and the government in

G9cWsenC

1 Antigua regarding the prosecution of Ambassador Ashe,
2 including, but not limited to," and then it lists various
3 subsets within that.

4 MR. RICHENTHAL: I'm sorry. I didn't realize that's
5 what your Honor was asking.

6 THE COURT: I'm sorry. That's my mistake. The
7 conference center documents are actually above that. The next
8 documents are the internal documents. The conference center
9 documents refer to information, internal communications with
10 the United Nations, minutes of meetings within the United
11 Nations, positions taken or arguments by members of the United
12 Nations.

13 I think all of those documents, and just correct me if
14 I'm wrong, Mr. Park, all of those documents are U.N. documents
15 for the conference center document request.

16 MR. PARK: I'm just taking a quick look. I think
17 that's right.

18 THE COURT: All right. I apologize. I had jumped
19 ahead. Similarly with regard to the PGA document requests,
20 Mr. Park you should work in a similar way to get whatever
21 documents you feel are important with regard to that.

22 MR. PARK: Yes, your Honor.

23 THE COURT: Now I think we're to the internal
24 documents, and with regard to that, Mr. Park, it's up to you.
25 As I said, I'm not going to stand in the way of you filing a

G9cWsenC

1 reply. With regard to the first two categories of documents, I
2 don't think a reply is necessary.

3 With regard to the third category of documents, which
4 are really internal documents that are related to the United
5 States and the United States has opposed that for various
6 reasons, I think if there is going to be a focus of your reply,
7 it should be there. In addition, and I don't believe this
8 necessarily was raised, I know that you've raised it in the
9 context of the purpose or the motivation behind the prosecution
10 of the case and suggest that there may be a political or
11 international political motivations, and I understand that
12 argument, but what I'd like you to also address in your reply
13 is putting aside the government's motivations and how they came
14 to decide to prosecute one person versus another, how they
15 decided on the timing, what charges they intended to bring
16 typically are covered by the deliberative process privilege.

17 I don't think either party has addressed that issue in
18 this context. I suppose your argument will be, Well, that may
19 be well and good, but we believe our Brady argument, everything
20 trumps that, but I'd like you to address the issue of
21 deliberative process, in cases where basically the government's
22 thought process -- by saying that I'm not saying how or what
23 thought process was involved. I'm just saying that normally
24 those communications are protected, and I don't know under what
25 circumstances that protection is vitiated or waived, or however

G9cWsenC

1 you want to put it, putting aside again the substance of what's
2 being sought.

3 I'll make just an observation and apologize in advance
4 to the assistants and the agent in this case. It would seem
5 odd to me that that sort of responsibility in terms of the
6 government's own position vis-à-vis another country is being
7 entrusted to people who are prosecutors, not State Department
8 people and people who have experience in what they're doing.

9 Off the record for a second.

10 (Discussion off the record)

11 THE COURT: I understand the argument. I'm just not
12 sure I see the connection in the sense that there would be,
13 based upon what you've cited in your papers. So I would
14 address sort of that aspect of it also, in other words, and
15 that goes to sort of more of what the support is that gets you
16 to the place that you're seeking, in other words, to get the
17 internal communications and actually whether or not there is
18 any evidence to suggest that those communications would even
19 exist in the form that you're seeking. I mean, I guess with
20 regard to the third, that's fine. And again I'm not saying you
21 don't address the other two tranches of documents, but I think
22 it's really the third tranche because certain of those
23 documents are within the control of the United States
24 Attorney's Office. There are other documents that you've
25 requested that I think are internal State Department documents.

G9cWsenC

1 Well, let me ask this. Am I correct that it's not
2 only documents that were necessarily communicated to the U.S.
3 Attorney's Office; am I correct that some of the requests deal
4 with documents that may never have made it to the U.S.
5 Attorney's Office, just internal communications within the
6 State Department?

7 MR. PARK: That's correct, your Honor.

8 THE COURT: All right.

9 MR. PARK: Can I address, and I will address the
10 issues that your Honor has flagged in my reply, but the last
11 question you asked is directly related to why kind of the
12 national foreign relations issue would be entrusted to
13 prosecutors. First of all, this is the Southern District U.S.
14 Attorney's Office. Secondly, I will reemphasize --

15 THE COURT: And everybody in the office is going,
16 Yeah, it is the Southern District.

17 MR. PARK: That office has for decades been entrusted
18 with matters of national importance, so they're well versed in
19 how to deal with these things.

20 Secondly, it took a mere arrest and mere complaint for
21 the U.N. to stop altogether any further consideration, as far
22 as we know, of the South-South Conference, permanent conference
23 in Macau. So why do we want the State Department files?
24 Because we think the State Department files may reflect
25 considerable discussion about what is the most efficient and

G9cWsenC

1 effective way of either stopping or putting an obstacle to the
2 progress of the U.N.'s consideration of this issue, and it
3 really doesn't take much for the criminal authorities to do
4 that or a lot coordination, frankly, with the criminal
5 authorities. We don't know. We're in a black box here, and
6 that's why we're asking your Honor, based on all the extraneous
7 circumstances that I've outlined, to at least give that serious
8 consideration.

9 THE COURT: All right. Let me just see whether
10 there's anything else.

11 Ms. Shroff.

12 MR. PARK: Your Honor, I'm sorry. I just want the
13 record to be clear and the Court to understand that while
14 Mr. Richenthal says to his knowledge all of the documents that
15 the government received from the U.N. were promptly turned over
16 to the defense, that's not exactly accurate. We are told that
17 there is a tranche of additional documents from the U.N. that
18 they've identified that is scheduled for disclosure that hasn't
19 yet been disclosed, so it is a process. I don't discount what
20 Mr. Richenthal says. I think he should be aware, if he's not
21 already, that there is a considerable lag before we ever get
22 those documents, even if the government intends to make them
23 available, just because of the mechanics of these things.

24 THE COURT: Yes, and I don't profess to know exactly
25 how that needs to happen, but my main concern and the main

G9cWsenC

1 thrust of my questions was to make sure that whatever the
2 government got from the United Nations it was turned over and
3 hopefully as expeditiously as possible. I just want to make
4 sure that it was, in fact, turned over. In other words, I want
5 to confirm there were no documents in their possession from the
6 United Nations that they had not turned over, because then
7 that's a different argument because it is in their possession
8 at that point in time, if there were such documents, there may
9 be arguments or steps they would need to take to produce them,
10 I don't know, but apparently there are no such documents, even
11 though there are some documents in the pipeline yet to be
12 produced.

13 Does anybody need a break?

14 MS. SHROFF: Can I have one second with Mr. Park
15 before we leave this topic?

16 THE COURT: You can have as many seconds as you'd
17 like. Go ahead.

18 Yes.

19 MS. SHROFF: Your Honor, we may submit to the Court
20 Mr. Yin's position on this issue such that it will not affect
21 any timing or timetable set, that the same schedule that is set
22 for Mr. Park's client can be set for ours. But we may have
23 something that we would like to submit to the Court on behalf
24 of Mr. Yin in regard to this issue.

25 THE COURT: OK. I guess I want to try and understand

G9cWsenC

1 the issue. Are you saying that you're joining in Mr. Park's
2 application? In other words, as I understand right now, you
3 haven't separately sent your own requests to the United
4 Nations. I don't know what implications that may mean, in
5 other words, if documents are produced or once they're produced
6 to Mr. Ng, whether or not they then -- I assume, but I don't
7 know. I assume that since the U.N. basically says that they're
8 willing to cooperate to facilitate the proper administration of
9 justice that it means for both defendants. I have no doubt
10 that that's the case, but they may require something from you,
11 whether it's a "me too" or something to make sure you're in the
12 queue along the same way so you're included in the
13 conversations or communication, whatever they may be that might
14 occur. But if what you're saying is something different, in
15 other words, there may be some of these documents that you
16 either don't have any interest in or actually more to the point
17 that you just, for whatever reason, say you're objecting to,
18 that's different. I guess what I'm asking is what exactly
19 would be the submission that you're giving to me?

20 MS. SHROFF: I think it would be the two and a slight
21 augmentation of what Mr. Park has requested, but I'm certain
22 that maybe Mr. Jones and I can speak after and resolve it.

23 THE COURT: OK. That may be, but again it may be just
24 because of the process that's at least been described to me
25 here, you may need to put something into the American mission

G9cWsenC

1 in order to get the ball rolling in terms of communicating with
2 the United Nations, as I understand it.

3 MS. SHROFF: That's fine.

4 THE COURT: OK. I wanted to switch to the issue of
5 the *ex parte* motion the government has filed under CIPA. Ms.
6 Shroff, you had an application and I think Mr. Mo at the July
7 11 conference indicated that he would join, so I am taking it
8 as a submission that basically both defendants are requesting.
9 At the conference, I asked whether there were any cases where a
10 court has granted defense counsel access to the government's *ex*
11 *parte* motion papers at this stage of the proceeding. My
12 reading of the submissions and my looking at the cases suggests
13 to me that there aren't any courts that have done so. And I
14 just want to make sure from both parties that I haven't missed
15 anything. Is that accurate?

16 MS. SHROFF: That's what my research shows, your
17 Honor.

18 THE COURT: All right. As I understand my authority
19 here, while I have discretion, no other court to date has ruled
20 that the *ex parte* motion filed by the government for me to
21 consider to make a decision about whether or not the documents
22 that they have in their possession, whether or not they are
23 relevant, whether or not they're discoverable, and whether or
24 not the third question is I think -- I can't remember the
25 language. I apologize.

G9cWsenC

1 MR. RICHENTHAL: Whether they're helpful, your Honor.

2 THE COURT: Helpful to the defense. As I understand
3 it, no court has done that, and while I recognize the argument
4 that you make concerning the nature of this case -- in other
5 words, as I understand the argument, this is not a terrorism
6 case and I think the suggestion being that therefore the
7 underlying issues, they don't involve issues relating to
8 terrorism. I don't want to put words in your mouth. With
9 regard to that particular prong of the argument, I thought that
10 was where you were coming from.

11 MS. SHROFF: That is right, but your Honor,
12 traditionally that's the government's interest. Right? That's
13 the reason that the government holds out and says: Look, in
14 balancing it all out, in balancing the concerns that we have,
15 what is of primary concern is national security. What is of
16 primary concern is the safety of the public. What is of
17 primary concern is that we all remain safe.

18 Those concerns which generally most courts take into
19 account when deciding these motions are clearly absent. I'm
20 trying to distinguish this kind of a case and the case that
21 every other court has seemingly considered and it's considered
22 only in the national security context.

23 THE COURT: OK.

24 MS. SHROFF: And just for the record, today it's
25 clear, as it was before and I'm sure this is fair, we're not

G9cWsenC

1 seeking widespread disclosure. We're seeking disclosure only
2 to cleared counsel. Right? Now, the government may stand up
3 and say, Look, we don't know the nature of the application and
4 even though this is not a national security case, there are
5 national security concerns that are nevertheless raised. And
6 if that's how the Court ultimately analyzes the government's
7 application, then I guess my argument would be diluted to that
8 extent. But to the extent that what we know of the discovery
9 in the case, what we know of the allegations in the case, it
10 seems to us that the analysis here could be qualitatively
11 different and therefore the results should be qualitatively
12 different. That said, I want to make extremely clear that the
13 defense bar had waited years for United States v. Booker.

14 THE COURT: I'm sorry?

15 MS. SHROFF: The ruling in United States v. Booker.

16 THE COURT: OK.

17 MR. PARK: Nobody thought that would come down, and it
18 did. And I still continue to believe that CIPA never meant to
19 substitute secrecy over discovery, not just in this case or in
20 any terrorism case. I would not want the government citing my
21 oral argument today to say she's drawn a distinction between
22 terrorism and nonterrorism cases. CIPA's not supposed to eat
23 up Rule 16. CIPA is not supposed to eat up my client's due
24 process rights, not in this case and not in a terrorism case.
25 Our position should be clear, cleared counsel should be

G9cWsenC

1 entitled to information that they can then seek under a CIPA
2 proceeding to declassify or to get subsequent classification.

3 THE COURT: OK. I think with regard to the argument
4 that the case is substantively different or I should consider
5 the motion as substantively different because it's, I guess,
6 not a terrorism case, CIPA was passed, I think, in 1980.
7 Although terrorism existed back then, it was a totally
8 different situation. Right? That was before the '93 bombing
9 of the World Trade Center, before 9/11, before the incident in
10 the embassies overseas. So it was passed at a time period when
11 there wasn't really consideration of those cases, and the law
12 developed even prior to terrorism cases that the government,
13 and again CIPA provides in itself that "the court may permit
14 the United States to make a request for such authorization in
15 the form of written statement to be inspected by the court
16 alone." So CIPA provides for that, that the Court in its
17 discretion can have that occur.

18 I think, Ms. Shroff, you mentioned the argument is
19 somewhat diluted by the fact, and I think that's right because
20 CIPA has been around for a long time. And while I recognize
21 there are other national security issues other than that relate
22 to terrorism, and even before CIPA's passage, there have been
23 different classifications of documents.

24 There are many circumstances, I think, when the
25 defense has no access. In other words, Rule 16 provides and

G9cWsenC

1 puts in the government's hands the decision-making with regard
2 to what is or is not 3500 material, what is or is not covered
3 by Rule 16, so there may be documents and things out there that
4 the defense doesn't seek. Here what is occurring, and there
5 have been *ex parte* applications that have been permitted by
6 various courts outside of CIPA's consideration. I understand
7 the argument that you make, that the defense is probably in the
8 best position to make a determination with regard to relevancy,
9 but here I've got to balance several things, and I have in past
10 cases been asked to make rulings *ex parte* on various issues.

11 In this circumstance I think the way I'm going to
12 proceed is the way I outlined earlier, because as I read both
13 the Second Circuit's case in Abu-Jihaad, it stated, "Insofar as
14 Abu-Jihaad faults the district court for entertaining the
15 government's motions for a protective order *ex parte*, his
16 argument is unconvincing. Abu-Jihaad does not dispute that
17 Section 4 of CIPA and Rule 16(d)(1) of the Federal Rules of
18 Criminal Procedure both authorize *ex parte* proceedings.
19 Accordingly, his contention that such submissions are improper
20 'absent a showing of exceptional circumstance' amount to a
21 challenge of the district court's exercise of discretion to
22 proceed *ex parte*. The argument fails in light of the decisions
23 in United States v. Aref in which we recognize that where the
24 government moves to withhold classified information from the
25 defense, 'an adversary hearing, with defense knowledge, would

G9cWsenC

1 defeat the very purpose of the discovery rules.'" "

2 The Court goes on to say, "In such circumstance, a
3 district court's decision to conduct *ex parte* hearings
4 manifests no abuse of discretion," and the Court goes on to
5 cite various cases: United States v. Stewart in this circuit;
6 United States v. Klimavicius-Viloria in the Ninth Circuit, and
7 I'll add to that United States v. Amawi, which isn't cited in
8 the case, but that did reject either obtaining the *ex parte*
9 submissions or the *ex parte* hearings that certain courts have
10 conducted after those submissions had been made. I think the
11 way we're going to proceed here is I'm going to deny the
12 request by the defense for the government's motion papers that
13 were submitted *ex parte*. As I've indicated in the past, what
14 we will do, and what I will ask defense counsel to do, is
15 figure out a time or date that would work when I can meet with
16 defense counsel *in camera* under seal with a court reporter so
17 that I can get a sense.

18 I already have a sense obviously, Mr. Park, Mr. Mo,
19 and Ms. Shapiro, of what some of the defense issues are because
20 in your motion to compel, I think you lay out some of the
21 defense, where you may be coming from in terms of your defense,
22 but this will allow you to give me a more detailed version of
23 that so that I have a better understanding of your views when I
24 review the government's motion and review any of those
25 underlying documents that relate to it.

G9cWsenC

1 I'd ask you to consider sort of when that will work,
2 perhaps dates, somewhere in between. I think we should do it
3 sometime in October, if that's possible, so if you could
4 provide me with dates in October, and obviously you can
5 proceed. This is something that I'm not directing that you do,
6 but I think it seems to make sense, and other judges have
7 adopted a similar process, but it's up to you after consulting
8 with your clients about how they want to proceed, and obviously
9 I would hear you each separately about that. I think I've
10 gotten the government's application. I don't know if there's
11 anything in addition that they think they need to add at all.
12 That is the way we're going to proceed.

13 MR. RICHENTHAL: I just want to say we think our
14 submission speaks for itself, but if the Court wants to hear
15 from us on an *ex parte* basis, obviously we'll make ourselves
16 available. Section 6 of CIPA expressly contemplates an *ex*
17 *parte* proceeding if your Honor would want to have one, but we
18 do think the submission speaks for itself.

19 THE COURT: Yes, and I think in light of that, what I
20 will say is that after meeting with the defense, obviously I
21 have a certain idea in terms of, Mr. Park, what some of
22 Mr. Ng's defenses will be and I'll have more, perhaps, once I
23 see the motions that get submitted. But once I communicate
24 with the defense counsel, I may have questions for the
25 government -- I may not -- concerning their position with

G9cWsenC

1 regard to the documents that are referenced in their *ex parte*
2 submission.

3 The one thing I will say, and Mr. Park, this may help
4 Mr. Ng's defense deem in focusing on sort of requests to the
5 United Nations, there is an argument, I think, in your papers
6 about other countries, missions -- I don't know what it would
7 be, but other countries and how they were supportive of the
8 idea of having a conference center in Macau. In thinking about
9 it, it seems to me that the mere fact that there may have been
10 support, and just in terms of maximizing what you would seek,
11 it seems to me only becomes relevant, because you mentioned
12 what Mr. Ng's state of mind would be. It only is relevant if
13 Mr. Ng is aware of those particular entities or individuals who
14 represent those entities, what their views are, and I'm not
15 saying that even then it's necessarily admissible. In other
16 words, I guess what I'm asking is, and this is for you to just
17 think about, the mere fact that there may have been others
18 within the United Nations who basically think, Well, this is a
19 good idea, vis-à-vis this criminal case and Mr. Ng or Mr. Yin's
20 defense, I don't see it being something that is necessarily
21 connected to a defense other than impacting some individual's
22 state of mind, in other words, that they didn't formulate the
23 intent that's necessary for the bribery statute.

24 I think the argument was everybody believed it was a
25 good idea, but unless Mr. Ng was aware of those positions --

G9cWsenC

1 and again, I'm in a way just talking about what I was thinking
2 about it as I was reading the motions -- it would seem to me
3 that the documents, the things he was unaware of couldn't
4 impact his state of mind.

5 Yes.

6 MR. PARK: A couple of things, your Honor. Obviously
7 we state the obvious, it is the government's burden of proving
8 a corrupt intent.

9 THE COURT: Correct.

10 MR. PARK: How do they do that with respect to
11 somebody who was espousing a program that he believes is
12 something that's going to widely receive acceptance and even
13 encouragement and support? And in fact, if it turns out, if
14 the documents show, that in fact the other members of the
15 general assembly, especially those in the South-South nations,
16 which comprise the vast majority of the United Nations
17 membership, also say that could be a good idea, so it's their
18 burden, and I think that from a defense perspective as we
19 figure out how to prepare for the defense on the issue of
20 corrupt intent, it's obviously material. Now, as to whether it
21 is ultimately exculpatory, we don't know yet, but I think it's
22 beyond possible that it will be material to the defense.

23 That's the first part. And Judge, I think everyone
24 should assume that the defense will put on a defense, and so we
25 can't sit here now, and I don't think the Court or the

G9cWsenC

1 government can be in a position to say, Well, how do we know
2 whether he knew or not. With respect, I don't think that's the
3 test for whether we should get access to those documents for
4 the purposes of defense preparation.

5 THE COURT: I understand. I mean, there's
6 preparation, but I guess what I'm saying is when you're
7 thinking about documents to focus on, documents and individuals
8 whom Mr. Ng may have had interaction with may be a closer call
9 than if he never heard about the documents, in other words,
10 didn't know anything about. I'm not saying what I'm going to
11 rule on that. I'm just saying in my thinking about it, I'm not
12 sure in a criminal case how it becomes relevant that people all
13 thought it was a good idea.

14 MR. PARK: Here's why, Judge, because this is the
15 appeal to the jury. Right? A person makes a decision as to
16 whether he's going to step over the line and become a criminal
17 or not. That's what criminal intent is about, the willfulness,
18 desire and willingness to break the law.

19 THE COURT: Yes.

20 MR. PARK: Now, if he genuinely believes and the
21 audience to which this program is directed generally believes
22 this is a good idea, why would he break the law?

23 THE COURT: Here's the problem, though, and we don't
24 need to get into this back and forth. I'm just saying in terms
25 of what you're seeking to get in prioritizing things, I'm

G9cWsenC

1 giving you my initial view. I know this is going to be a
2 subject of *in limine* motions, but there's a disconnect between
3 what Mr. Ng, and again we're talking hypothetically here
4 obviously. But there's a disconnect if he's unaware. He may
5 think and suspect that everybody at the U.N. thinks this is a
6 good idea, and certainly the countries that are part of the
7 South-South contingent would think it's a good idea, and that
8 can be expressed in some way, but if he doesn't know that -- I
9 mean, he's assuming that. In other words, unless he's aware of
10 something that would change his state of mind, that would
11 impact -- again, it's whether or not he had the criminal intent
12 to do what the government's claiming he did.

13 MR. PARK: And I think this will be obviously the
14 subject of a more thorough *in limine* motion.

15 THE COURT: Yes.

16 MR. PARK: But I will just leave the Court with this
17 thought, because I think it is important for your Honor to have
18 an orientation which understands our position, the point that
19 you make is a big if, Judge, if he didn't know or if he was not
20 aware of the members' general views and receptivity to this,
21 that's a big if. We don't have to hurdle that if obviously in
22 order for this to ultimately be discoverable.

23 THE COURT: Right.

24 MR. PARK: Whether it becomes ultimately admissible,
25 that's a separate question for *in limine*, I agree with that,

G9cWsenC

1 Judge.

2 THE COURT: Yes.

3 MR. PARK: And it may well be something we submit, but
4 we have to get it first.

5 THE COURT: Yes, I understand. I wanted to give you
6 some of my preliminary thoughts as I was thinking about the
7 different categories of documents that you were seeking to get.

8 MR. PARK: Thank you, your Honor.

9 THE COURT: OK. Trial. We're sort of coming full
10 circle, and this is sort of an outline. I know, Ms. Shroff and
11 Ms. Glashausser, because of your trial schedule and other
12 issues that you've expressed concern about that date. This is
13 what I'm going to propose. I'm going to hold that date right
14 now, because I don't know what's going to happen in those other
15 cases. I understand that there will come a point where I'll
16 have to make a decision about whether we're going forward on
17 the 23rd, but I also want to see, quite frankly, what the
18 situation is with the documents that I expect, however many
19 they may be, will come from the U.N. and how long that's going
20 to take. What I'm saying is, look, I've expressed it in the
21 past, that January 23 was the date we were going to trial and I
22 want to hold that.

23 Having said that, I understand that Ms. Shroff and
24 Ms. Glashausser are the most knowledgeable people at the
25 Federal Defenders about the case. Oftentimes there have been

G9cWsenC

1 situations, and usually it's not with the defense, it's usually
2 with the government, where a judge will say, OK, someone else
3 can try the case. I'm not going to obviously do that here; I'm
4 not going to suggest that that even occur. You've been on the
5 case long enough. But I'm going to wait and see if we can make
6 that January 23 date work, because I know that Mr. Park and
7 Mr. Mo and Ms. Shapiro on behalf of Mr. Ng want to go to trial
8 on that date, as do I.

9 Having said that, we're not trying this twice. That
10 simply makes no sense. Unless you can in the scheme of this
11 case where there really aren't any other issues, other than the
12 availability of counsel and perhaps the documents that are
13 going to be produced -- in other words, there's no other issue
14 that would warrant severance. At least at this stage, I would
15 exercise my discretion and say we're going to try the cases
16 together obviously, because there's nothing at least in my mind
17 that would prevent these cases from being tried together, as
18 most cases where defendants are accused under one indictment
19 and in the same counts. That's my thought on that. I think
20 that would probably make sense.

21 Let me ask this, Ms. Shroff, and it sounds like it's
22 really the Judge Ramos case, are there any court appearances
23 between now and the trial date, and if so when are they?

24 MS. SHROFF: May I just tell the Court something?

25 THE COURT: Yes.

G9cWsenC

1 MS. SHROFF: Here's the thing. The government in the
2 Gammal case, which is the Judge Ramos case, served their FISA
3 notice on July 13 of 2015. Mr. Gammal was arrested more than a
4 year before that. So since they always say they're one office,
5 boohoo to them, because this is not our doing in the Gammal
6 case; they did it, and that is why we were forced to adjourn
7 that trial date. Although I may not have told Judge Ramos
8 about this trial date, we tried to pick a trial date in Gammal
9 which was closer to November so we could have enough time
10 between two lawyers to still plan to be prepared on Jeff Yin,
11 but the agent in the Gammal case, his wife was having a baby or
12 is still having a baby, so we don't want to say no to his
13 request for additional time, which is why that date was pushed
14 to December 5.

15 I'm giving you this long-winded story just so you know
16 that we didn't want to be unmindful of the agent's personal
17 life, so we agreed to that and also because I had very candidly
18 told this Court that my January 23 trial date was not a date
19 that I could promise that I could stick to completely. Right?

20 THE COURT: It's on the record. You did couch, it
21 wasn't an unequivocal, "yes, I can go forward, no problem."
22 You did mention the trial before Judge Wood at that time. I'm
23 just trying to find a place for this case to go to trial and
24 also accommodate -- obviously, Ms. Shroff, if you have a
25 detained defendant, for reasons as I'm sure everybody knows,

G9cWsenC

1 that case, especially if it's an older case, is a case that you
2 should put priority to. The only reason I was asking is I want
3 to set another date when we can come back or when I can get an
4 update from the parties on where things stand in terms of
5 getting whatever documents there may be from the U.N. and
6 including whether your schedule has freed up.

7 MS. SHROFF: My final pretrial conference before Judge
8 Ramos is on November the 21st.

9 THE COURT: All right. Why don't we do this. Why
10 don't we have a status update from the parties, basically a
11 letter, why don't we say in a month so that I have a sense of
12 where things are going in terms of documents from the United
13 Nations. And also quite frankly, obviously try and get a
14 sense, and this is directed to Mr. Ng's counsel and also the
15 government, about what the timing's going to be about getting
16 these documents produced.

17 I guess, Mr. Richenthal, what I would ask is, if you
18 can, in thinking about how the government obtained these
19 documents, how much time it took, speak with defense counsel
20 and sort of impart to them about when you may have made your
21 initial request. Just give them a sense of timing so that I
22 have a sense of timing, or even if you don't want to give them
23 a sense, give me a sense so that I know whether or not January
24 23 is realistic even for Mr. Ng, because if it's not, what I'd
25 want to do is get a date that everybody is available that we

G9cWsenC

1 can try this case and not leave a trial date that is
2 unrealistic.

3 MR. RICHENTHAL: I'm happy to give your Honor a sense
4 and Mr. Park a sense. It's substantial. In our experience,
5 it's typically been measured in months, not weeks and certainly
6 not days. We asked for a lot less than Mr. Ng has asked for,
7 and it still took a very long time, and I understand why.
8 That's not to be negative about the U.N. Given the breadth of
9 Mr. Ng's requests, I can't imagine how much time it will take.

10 THE COURT: I hope there has been a little bit of at
11 least greasing of the wheels, so to speak, because I don't know
12 how often the U.N. gets requests like this. I'd hazard to
13 guess it may not be all that often. I don't know. I'm sure on
14 their end they're also used to requests that are not related to
15 court proceedings as opposed to other requests that they get
16 through the State Department or even, I guess, privately. So
17 if you can give me a sense in a month -- does October 12 fall
18 on a weekday -- of where things stand, and once I get that
19 communication, I'll decide whether or not we need to get
20 together and talk about an alternative trial date.

21 What I would say is this. If it becomes clear to you
22 that the 23rd, and I guess this is directed to Mr. Ng's team,
23 that you're not going to get the documents in time such that
24 you would be able to review them and that you would be able to
25 make use, obviously the defense doesn't need to submit any

G9cWsenC

1 documents and doesn't need to put on any witnesses. Having
2 said that, if you have a sense of what you're thinking about
3 doing, and also, quite frankly, since we've discussed that
4 these documents might be the subject of an *in limine* motion,
5 we're going to need to know in the next month what the scope of
6 those documents are before the trial. It may be that I make
7 rulings on the *in limine* motions and you never use the
8 documents, but it may be that you want to use them, and we have
9 to know that sooner rather than later both in terms of -- and
10 again, I'm not saying how either side intends to try the case,
11 but in terms of how you're going to open, and the like. So I
12 want to try and do that in advance. If it turns out you're
13 going to say there's no way we're going to get this stuff in
14 time, meet and confer, figure out dates in the future,
15 obviously including Mr. Yin's counsel, and propose dates for
16 me.

17 I can tell you just in terms of the criminal trials I
18 have, and obviously it's not going to be anything earlier. The
19 only trial I have after January is in April. No. I have a
20 February trial, February 21, which will last why don't we say
21 three weeks, just to be on the safe side. The allegation is
22 kidnapping that resulted in death, so why don't we say three
23 weeks for that, and then I have a trial in April, and that's a
24 detained defendant's case, and April is also a detained
25 defendant's case, April 27, so the end of April. Just with

G9cWsenC

1 that in mind -- April 17.

2 MR. PARK: Judge, how long is that expected to take,
3 that trial?

4 THE COURT: Right now there are still nine defendants,
5 so depending upon who's in, it's going to take several weeks.
6 Right now some of the defendants have made a severance motion,
7 but at least one part of that case will go forward on that
8 date, on the 17th, and it will last three weeks, again, just to
9 be on the safe side. I guess the first case is United States
10 v. O'Neill, and this is just in case you want to speak to the
11 counsel on either side that are on that case, 16 Cr. 29. The
12 other case is United States v. Jones, which is 15 Cr. 153, to
13 get a better sense, because again what do I know in terms of
14 how long something's going to take. Speak both with folks in
15 the U.S. Attorney's Office and the defense counsel on those
16 cases to get a sense from them of what's going to happen. But
17 communicate with one another. If in fact it looks like the
18 23rd is not going to work, we'll come up with another date.

19 Is there anything else?

20 Mr. Park.

21 MR. PARK: Yes, your Honor. There is the issue of the
22 postarrest statement.

23 THE COURT: Yes. Have you been able to talk to the
24 government about the postarrest statement? Let me confirm
25 something just for myself, because I couldn't quite figure it

G9cWsenC

1 out. Is it that the defense team got a disk but not a
2 transcript and that your team created a transcript? Is that
3 what happened?

4 MR. PARK: Yes, your Honor.

5 THE COURT: OK.

6 MR. PARK: First, before our firm was involved in this
7 case, one of the first things that was disclosed was a
8 videotape of the postarrest statement of our client, Mr. Ng.

9 THE COURT: Yes.

10 MR. PARK: Apparently when that was sent over to
11 Mr. Brafman at the time, they put on an index, a discovery
12 index, of all the things that they'd produced, they put the
13 "confidential" legend on that index. I'm not aware that that
14 confidential legend appears actually on the video itself, just
15 on the index of discovery that they produced.

16 THE COURT: OK.

17 MR. PARK: And if I'm wrong about that, I stand
18 corrected, but in any event, when we subsequently started
19 working on the motion to compel, I was not aware that there had
20 been any designation.

21 THE COURT: It was a mistake.

22 MR. PARK: I had never seen anything like that. It
23 would never have occurred to me that a postarrest statement
24 would be designated as confidential. We then prepared a
25 transcript of that interview. It's a rough transcript that our

G9cWsenC

1 firm prepared, so it was that transcript that was then appended
2 to our motion to compel. The government then asked us to agree
3 to withdraw that. We had that dialogue, as your Honor is
4 aware.

5 THE COURT: Yes.

6 MR. PARK: And then your Honor agreed because we were
7 not objecting to it at that time to withdraw that transcript
8 just because we had not complied with the procedures that we
9 had thought applied. Obviously now we're making a motion to
10 suppress the statements. It is critical that that transcript
11 and video come into evidence before your Honor so that your
12 Honor can view it and rule on it. We do not see any basis for
13 designating that document, either the transcript or the video,
14 as confidential. It is an exchange that the government had
15 with our client before there was any protective order in place
16 at all, so everything that appears in that interview clearly
17 was not subject to protective order. The government cannot
18 unilaterally decide that they're going to designate something
19 as confidential. It violates public policy. There's no basis
20 for it. And the other thing Ms. Shroff pointed out, as we were
21 discussing this just on Friday, is that paragraph 5 of the
22 protective order actually exempts the scope of the protective
23 order and the confidentiality when the parties are making a
24 motion in connection with the document.

25 THE COURT: To just be clear, it may be that the

G9cWsenC

1 language that you used was that you were withdrawing it. I
2 think what has happened in reality -- I'm reviewing it in
3 connection with your motion. It's something that has been, I
4 think, and I'm not sure, I haven't checked recently, it may be
5 only accessible to the Court, to me, and just not to others.
6 So in connection with any motion you make, and putting aside
7 the confidentiality, I'm absolutely going to consider it. In
8 other words, whether it's confidential or not, it's a document
9 that will be before me and I'll make a ruling on that basis.
10 But let me ask this, because I just don't know what the basis
11 is, have you spoken since?

12 MR. PARK: Yes, your Honor.

13 THE COURT: OK.

14 MR. PARK: Mr. Richenthal told me before this
15 conference began this morning that the basis is because there
16 are some references to parties or targets, investigative
17 issues, and they would be fine as long as all of that is
18 redacted. I don't think that's appropriate. I don't think you
19 get to redact something after the fact.

20 THE COURT: Go ahead.

21 MR. PARK: Your Honor, I just don't think that's
22 appropriate. If the agents had sensitivities to those issues,
23 they should not have specifically referenced it. It's akin to
24 muzzling our client, because he has a recollection of
25 everything that transpired.

G9cWsenC

1 THE COURT: There are different issues here. Let me
2 be clear. It's not muzzling your client because that statement
3 is going to be before me. All of those things will be before
4 me. I'm not just reading a redacted version, I'm reading a
5 full version. Again, whether there was a protective order in
6 place, or not, the government may make an application now
7 because they have an ongoing investigation so they would like
8 those names not in the public record, and they can make that
9 application. But with regard to your motion, let me be clear,
10 I'm considering, and I don't know what the relevance of those
11 names or places may be, I don't know what relevance they have
12 to your motion or not, but they will be before me. And I
13 understand, we can revisit because now I don't know and perhaps
14 you can think about this and we can talk about it at a later
15 date, I would need to have a sense of what those redactions
16 are, and I'm not sure that now is the time to sort of go
17 through that, because it sounds to me as if there's no
18 objection to I think much of the statement, but there may be an
19 objection to parts of it.

20 Yes, Ms. Shroff.

21 MS. SHROFF: I want to be very clear on Jeff Yin's
22 postarrest statement. The protective order that we signed
23 specifically states that we can make public and attach to our
24 motion papers Mr. Yin's postarrest statement.

25 THE COURT: OK. I'm not precluding you. There are

G9cWsenC

1 two separate issues here. There's one thing about attaching it
2 to your motion. Absolutely, no question you can attach it to
3 your motion and it's something I'll consider. There's another
4 issue about whether or not when someone goes on ECF on our
5 PACER and they click on it, they'll have access to the whole
6 document.

7 MS. SHROFF: But that is the motion. Motions are
8 filed publicly. The public has an interest in hearing about
9 the motion.

10 THE COURT: Ms. Shroff, I'll decide that once in fact,
11 and I don't even know if they're the same issues with regard to
12 Mr. Ng and what interest Mr. Ng has. I understand what the
13 public interest is -- you don't have to tell me about that, but
14 what interest Mr. Ng has with regard to those particular items
15 that the government is seeking to redact.

16 MS. SHROFF: I'm not speaking for Mr. Ng. I'm
17 speaking for Mr. Yin.

18 THE COURT: I'm sorry. I apologize.

19 MS. SHROFF: And No. 2, the government used my
20 client's postarrest statement when they sought to detain him.
21 They didn't hold back. Right? They took whatever helped them,
22 whatever made them look good. They put it out there. It was
23 quoted everywhere, all over the newspaper. The New York Times
24 had a photo of Mr. Yin in custody making his postarrest
25 statement, and now they can't suddenly say because they don't

G9cWsenC

1 want the whole postarrest statement revealed because somehow
2 now they believe it makes them look bad, or for whatever their
3 reason is, somehow or the other Mr. Yin's statement cannot be
4 made public. But most of all, your Honor, we would very much
5 appreciate if the Court were to ask the United States
6 Attorney's Office to please inform the defense in writing, not
7 in a conference call, not in a talking-points situation, in
8 writing, what is their basis to state that when we're filing a
9 public motion to suppress our client's postarrest statement it
10 may not be accessible to the public, because we have asked and
11 the government, instead of simply sending us a written
12 response, like most lawyers would, insist that their reasoning
13 only be communicated to us in a conference call, and we would
14 like to know in writing so that we can then take their argument
15 and write to the Court and seek relief.

16 THE COURT: How about this; let's do it a different
17 way. Do you know, Ms. Shroff, what portions of your client's
18 postarrest statement the government is proposing redacting?

19 MS. SHROFF: No, because --

20 THE COURT: Stop. This is what I'm going to propose.
21 You get that. I'm directing the government to provide to the
22 defense a redacted version of whatever the statements are to
23 both counsel, and obviously as I understand it --

24 Mr. Park, is it all right if they use your draft
25 version to indicate if there are additional places -- I just

G9cWsenC

1 want everybody to know what's being redacted. Once we have
2 that, then I'll be able to then assess whether or not the
3 materials that are redacted are things that the public should
4 have access to. I think that's the way to proceed.

5 MR. PARK: Just a couple things. That's fine, Judge.
6 Just to be clear, though, our draft has nothing to do with the
7 statements of Mr. Yin.

8 THE COURT: I understand.

9 MR. PARK: The second thing is what Ms. Shroff alludes
10 to is a communication I had with Mr. Richenthal this past
11 Friday where I said, Put it down in writing so we can then be
12 ready to discuss where we disagree. He declined to do that.
13 So now we're in a position where you're now directing him to
14 tell us. We were supposed to file the motions today. I'm fine
15 with the process, Judge, if he will put down, using our draft,
16 the portions that he would like us to redact and if there's no
17 issues from our perspective, then there isn't. If there is,
18 we'll bring it to your Honor's attention.

19 THE COURT: You can file those. I don't know whether
20 Mr. Yin is making a challenge to his postarrest statement, but
21 assuming he is, file those under seal right now. You have my
22 permission to do that. I understand you have an issue, but I
23 have to resolve this issue, and I understand that the press has
24 an interest in this, but I ask that to the extent you express
25 your displeasure, you're more than welcome to come speak with

G9cWsenC

1 me about that, because I need to resolve this issue. And right
2 now the issue isn't crystallized for me, so I'd like you to do
3 that, and the parties should meet and confer about that.

4 The other thing is more generally, and I understand
5 perhaps the issue with regard to this specific issue that you
6 didn't necessarily want to put in there because then the letter
7 itself you might view because you have to indicate something
8 that you believe should be under seal, but having said that,
9 I'd like the parties to do a better job of communicating with
10 each other and not talking past one another. I received, and
11 again, I understand sometimes it's easier to write a letter
12 than get in touch with folks on the phone, but I received, and
13 this is separate and apart from this last issue, the transcript
14 issue, which I think -- does that process work?

15 And as I said, I'm considering, and I understand that
16 your motions are due today, Mr. Park, so you can file it under
17 seal.

18 Ms. Shroff, you have some more time, so however you
19 want to proceed; hopefully we'll have resolved that issue by
20 that point in time. What will be filed, and once you agree, is
21 a redacted copy of the statement, both Mr. Ng's statement and
22 Mr. Yin's statement. They will be filed and then I'll make a
23 decision about whether or not the portions that are redacted
24 should be unredacted, as I understand it.

25 Let me ask the government this. Are we talking

G9cWsenC

1 about -- I mean, I'll see the redactions when we get them, but
2 it's my sense that we're not talking about wholesale redactions
3 of paragraphs or pages; we're talking about words, names,
4 dates, places, and the like. But having said that, I'll wait
5 to see exactly what it is. But let me be clear that while I'm
6 giving permission to file the statement by Mr. Ng under seal
7 now, what I expect is that a redacted statement get filed
8 promptly once the parties have communicated what the
9 government's position is with regard to those redactions,
10 because that is something that, A, my individual rules provide
11 for and, B, there are substantial portions of the statement
12 which I think there's no question that the public should have
13 access to.

14 Getting back to my other point about communications,
15 my sense is, based upon the advocacy to date on the case, there
16 is going to be a substantial amount of communication with me
17 and with my staff. For example, I got four or five letters
18 related to scheduling. I'd ask that once you realize that
19 there is some dispute, speak to one another so that everybody
20 understands exactly where things stand, and I understand there
21 was a little bit of people talking past one another or talking
22 to each other through the letters, and that shouldn't be the
23 case. There is going to be time during the case when there are
24 motions filed during the course of the trial where that's
25 what's going to happen, because of the nature of trials, but at

G9cWsenC

1 this stage, I'd like to try and do a little better job of
2 communicating, understanding that obviously you have to
3 zealously advocate on the defense side for your client. I'm
4 not saying don't submit something. What I'm saying is, if you
5 can, talk it through before bringing it to my attention, if you
6 can. If not, look, I'm not going anywhere.

7 Yes, Mr. Park.

8 MR. PARK: Your Honor, I'd certainly endeavor to do
9 that. Inasmuch as we are no longer being directed to file
10 today given the timetable, we have further revisions to the
11 draft, so it may make sense for us to refine that and share
12 that with the government so they can tell us of those revisions
13 what should be changed and then we can file ultimately the
14 redacted as well as the unredacted under seal.

15 THE COURT: Yes, and while we're talking about drafts
16 and the like, does the government have an objection?
17 Typically, when the government produces drafts, they do so
18 saying that you're not going to use it in connection with some
19 sort of cross-examination. From what I've heard, Mr. Ng has
20 not made that request. I would assume it's under the
21 assumption when the government takes that position that you
22 would not utilize the drafts in connection with any trial, in
23 other words, to cross-examine Mr. Ng, for example.

24 MR. RICHENTHAL: Absolutely, your Honor.

25 THE COURT: OK. I just wanted to be clear. So it's a

G9cWsenC

1 draft.

2 MR. PARK: Thank you, your Honor.

3 THE COURT: We understand it's a draft, and we'll just
4 proceed from there. That's fine. You should refine it as you
5 see fit, and talk about when it's going to be final and talk
6 about, as the government's going to produce its own version
7 obviously down the line, hopefully you can agree on exactly
8 what the correct transcription should be, but that's down the
9 line.

10 MS. SHROFF: Your Honor, Mr. Yin's statement is in
11 English, so there's no transcript to be given, and so the
12 government should let us know promptly what it is.

13 THE COURT: Tell you what. It's 2:00, but if you have
14 time, if the government has time, I don't know whether you have
15 the statement here, or you can call Ms. Shroff after the
16 conference and just let her know what the redactions are.

17 MR. RICHENTHAL: We do have the statement here, but
18 it's a video, and it's quite lengthy. Mr. Ng's statement is
19 more than two hours long. Mr. Yin's statement is more than an
20 hour and a half long. While we have a sense of what our
21 concerns are, I don't have second markings, and so it's going
22 to take some effort for us to provide those clips, so to speak,
23 but we'll do so expeditiously.

24 THE COURT: Fine. Is there anything else we need to
25 deal with today?

G9cWsenC

1 MR. RICHENTHAL: I don't recall whether your Honor
2 excluded time through January 23. I think you did, but in the
3 event you didn't, we would respectfully request that time be
4 excluded so that the defense can prepare and file its motions,
5 the parties may continue to produce discovery, deal with this
6 issue involving transcripts, and so on and so forth.

7 THE COURT: I think in my order that was filed on the
8 docket July 11, I did exclude time and I would exclude the time
9 now also for the same basis, to allow review of discovery,
10 pretrial motions, and the ends of justice served by the
11 exclusion outweigh the interests of the public and the
12 defendants in a speedy trial.

13 Yes, Mr. Park.

14 MR. PARK: Judge, just so it's clear, there are a
15 number of different motions, motion to suppress, motion for
16 bill of particulars, motion to dismiss. Just so it's clear, we
17 will file one motion after we've sorted out the draft and this
18 postarrest statement issue and file it. It won't be today but
19 certainly as soon as you feel that all that's been clarified.

20 THE COURT: That's fine. As I mentioned, you have the
21 same amount of time, to the 26th, as Ms. Shroff, but it sounds
22 like you're going to be able file your motion earlier.

23 MR. PARK: Yes, your Honor. That's correct.

24 THE COURT: And that will allow you to have more time.
25 The only thing I will say is that you still have your reply on

G9cWsenC

1 the motion to compel, due on the 19th.

2 MR. PARK: Yes, your Honor. Thank you.

3 THE COURT: Ms. Shroff.

4 MS. SHROFF: No, I have nothing more.

5 THE COURT: All right. Thank you very much for coming
6 in. I'm sure you didn't expect it would be this long, but we
7 did accomplish some things today. We'll stand adjourned.

8 (Adjourned)